

9
IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 3RD DAY OF APRIL 1998

BEFORE

THE HON'BLE MR. JUSTICE TIRATH S. THAKUR

WRIT PETITIONS No. 36034-37/1997

Between: (in W.P. 36034/97)

I. B. Ananda Shetty,
s/o Seena Shetty,
Aged about 52 years,
Plot No. 64, Santosh Colony,
Udnoor Road, Gulbarga.

... PETITIONER

And:

1. The Karnataka Housing Board
Cauvery Bhavan,
Kempwagowda Road,
Bangalore-9

Rep by its Secretary.

2. The Executive Engineer,
Karnataka Housing Board
Gulbarga Division,
Station Area, Main Road,
Gulbarga.

3. The Assistant Revenue Officer
& Competent Authority,
Karnataka Housing Board,
Gulbarga Division,
Gulbarga.

... RESPONDENTS

(in W.P. No. 36035/97)

Between:

II. Smt. Gulabi Bai,
w/o B. Ananda Shetty,
Aged about 45 years,
Plot No. 64, Santosh Colony,
Udnoor Road,
Gulbarga.

... PETITIONER

... 2

949

And:

1. The Karnataka Housing Board,
Cauvery Bhavan,
Kempegowda Road,
Bangalore-9.

Rep by its Secretary.

2. The Executive Engineer,
Karnataka Housing Board,
Gulbarga Division,
Station Area, Main Road,
Gulbarga.

3. The Assistant Revenue Officer
& Competent Authority,
Karnataka Housing Board,
Gulbarga Division,
Gulbarga.

... RESPONDENTS

(In W.P.No.36036/97)

Between:

- III. Padmanabha Shetty,
s/o Monappa Shetty,
Aged about 35 years,
Plot No.64, Santosh Colony,
Udnoor Road,
Gulbarga.

... PETITIONER

And:

1. The Karnataka Housing Board,
Cauvery Bhavan,
Kempegowda Road,
Bangalore-9

Rep by its Secretary.

2. The Executive Engineer,
Karnataka Housing Board,
Gulbarga Division,
Station Area, Main Road,
Gulbarga.

3. The Assistant Revenue Officer
& Competent Authority,
Karnataka Housing Board,
Gulbarga Division,
Gulbarga.

... RESPONDENTS

(in W.P.No.36037/97)

950

Between:

IV.Raju Shetty,
s/o Ganapaiah Shetty,
Aged about 32 years,
Plot No.64, Santosh Colony,
Udnoor Road,
Gulbarga.

... PETITIONER

(By Sri.B.V.Acharya, Sr.Counsel
for Sri.M.Jagannath Alva, Advs)

And:

1.The Karnataka Housing Board,
Cauvery Bhavan,
Kempegowda Road,
Bangalore-9.

Rep by its Secretary.

2.The Executive Engineer,
Karnataka Housing Board,
Gulbarga Division,
Station Area, Main Road,
Gulbarga.

3.The Assistant Revenue Officer
& Competent Authority,
Karnataka Housing Board,
Gulbarga Division,
Gulbarga.

... RESPONDENTS

(By Sri.Basavaraj.V.Sabarad &
Sri.R.S.Hegde, Advs)

These writ petitions are filed under articles 226 & 227 of the Constitution of India praying to direct the respondents to put the petitioners in possession of the premises described in the schedule to the W.P., alongwith all the movables which they have taken away from the schedule premises on 10.12.97 including the movables referred to at annexure-G and further direct them to pay the damages of Rs.10 lakhs and etc.,

These writ petitions coming on for hearing, the same having been heard and reserved for pronouncement of orders, the Court made the following:

...4

951

O R D E R

The petitioners have in these writ petitions called in question the validity of eviction notices issued against them under the Karnataka Housing Board Act 1962. The challenge is primarily based on what is termed as the failure of the competent authority in following the procedure prescribed for the issue of such notices and denial of a fair opportunity to the petitioners to defend themselves. The controversy arises in the following circumstances.

2) The petitioners claim to be tenants under the respondent-Housing Board in respect of certain commercial premises fully described in the writ petitions. Agreements which according to the petitioners creat tenancies in their favour but according to the respondents are no more than deeds creating licences for a limited period have been executed between the parties. The schedule premises although covered by seperate agreements executed in respect of each such property is being

used by them as as a single unit for running a vegetarian restaurant ~~therein~~ in the name and style of "Hotel Kamal". The petitioners claim to have invested over Rs.8 lakhs besides employing a large number of persons in connection with the running of the business. ~~The~~ Respondent No.3 who is the competent authority under the Karnataka Housing Board Act 1962 (hereinafter referred to as the Act), appears to have issued notices to the petitioners in January 1993 for payment of arrears which notices were challenged by the petitioners before the Addl.District Judge at Gulbarga in Miscellaneous Appeals No.2/93, 5/93, 4/93 and 3/93 as though the same were final notices issued u/s 45 of the Act. These appeals succeeded in part and were allowed by order dt.10.11.97 reserving liberty to the competent authority to take such action as may be deemed fit for eviction of the petitioners after issuing proper showcause notices to them. The petitioners case in the present writ petitions is that no notices were at any stage issued to them after the disposal of the appeals mentioned above although on 10.9.97 at about 10.30 a.m., the third respondent accompanied by his subordinates arrived at the business premises of the petitioners and asked them to vacate the premises immediately.



AS³

Since the third respondent was accompanied by a police contingent also besides other employees, the Manager incharge of the business was in no position to resist the eviction. A complaint made to the Superintendent of Police, Gulbarga is also alleged to have proved futile with the result that the belongings of the petitioners were all thrown out of the premises loaded in a truck and carried away. No mahazars or indent was according to the petitioners prepared nor was any care taken to prevent damage to valuable items like refrigerators, grinders etc., The action taken by the respondents was according to the petitioners high handed, totally illegal and unjustified, which was challenged in these writ petitions ~~in which the~~ ^{with a prayer} ~~petitioners~~ initially ~~prayed~~ for a mandamus directing the respondents to restore possession to them alongwith all movables removed by the respondents from the same.

3) By an interim order passed by this Court on 19.12.97 by Raveendran.J., the respondent-Board was directed to deliver the possession of the premises back to the petitioners together with the movables removed from the same. That order was challenged in Writ Appeals No.6515-18/97 by the

gsh

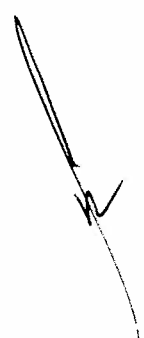
respondent-Board before a division bench of this Court. The appeals succeeded and were allowed by the order of the division bench dt.30.12.97. The division bench was of the view that keeping in view the nature of the controversy in the writ petition, the grant of an interim relief which was in substance the final relief also was not justified. The respondent-Board was however directed to maintain statusquo in respect of the property and not to let out the same to any third party pending final disposal of the writ petition.

4) In the statement of objections filed on behalf of the respondents it is urged that the eviction of the petitioners was based on the issue of final eviction notices to them in terms of Section 45 of the Act. it is contended that the eviction of the petitioners being in accordance with the procedure established by law co[uld not be found fault with in these proceedings. In the light of the defence taken by the respondents the petitioners were permitted to amend the writ petitions so as to challenge the eviction notices issued by the respondent-Authority which notices according to the petitioners were never served upon them nor were



they otherwise within their knowledge till the respondents filed their counter affidavits and set up their defence.

5) Mr. Acharya, learned counsel for the petitioners made a two fold submission in support of the writ petitions. Firstly he contended that the impugned eviction notices were issued without affording to the petitioners a fair and reasonable opportunity of being heard in the matter. He urged that although the showcause notices annexures-R14 to 19 purported to give to the petitioners 10 days time to file their reply, yet the impugned orders of eviction had been issued by the competent authority even before the expiry of the said period. Secondly, he urged a final notice issued in terms of Section 45 of the Act was required to give to the petitioners in respect of each premises under their occupation a minimum of one months time from the date of the service of such notices to vacate the same. He argued that the question of any coercive action for eviction of the petitioners on the basis of any such notices could arise only if the petitioners failed to vacate the premises within the time granted to them. The impugned notices were according to the learned counsel



956

- 9 -

served by affixture on 10.12.97 without giving to the petitioners the statutory period of one month to vacate and even the process of vacation of the premises in question by use of force was accomplished on the very same day. This procedure was according to the learned counsel wholly opposed to the scheme of section 45 and the Rules framed thereunder rendering not only the notices but their implementation totally illegal.

6) Counsel for the respondent-Board on the other hand contended that this Court need not interfere with the impugned notices for precisely speaking three distinct reasons. First and the foremost reason according to the learned counsel was that the petitions raised disputed questions of fact which could not be resolved in the writ jurisdiction of this Court. It was urged that the status of the petitioners was in dispute for according to the petitioners they were tenants while according to the respondent-Board they were no better than licencees whose term of licence had expired. So also the question whether the notice had been actually pasted on the disputed premises was in dispute as was the question regarding the arrears of rent/licence fee payable by the



952

petitioners. Without determining these questions, argued the learned counsel, ~~for~~ the petitioners could not be granted any relief. It was alternatively urged that the Act only envisaged the grant of a reasonable opportunity to the occupants which opportunity had been granted by the competent authority as the notices affixed on the premises had given to the petitioners an opportunity to file objections within 10 days which they had failed to do. Thirdly, it was contended that the petitioners had during the pendency of these proceedings deposited an amount of nearly 4 lakhs towards the arrears of rent payable by them which was enough according to the learned counsel to establish conclusively that there was sufficient justification for the competent authority to have initiated action for their eviction and in having got the premises eventually vacated. Reliance was also placed by the learned counsel upon decisions reported in AIR 1966 SC 691, AIR 1975 SC 1121, AIR 1974 Delhi 119, AIR 1964 SC 1419 and AIR 1952 SC 192 in support of his submissions.

7. Section 45 of the Karnataka Housing Board Act 1962 empowers the competent authority to direct the vacation of any premises owned by the Board by




the person in occupation thereof. Proviso to Sub Section (1) to Section 45 however requires that no such order of eviction shall be passed against the occupant unless the person concerned had been afforded an opportunity to showcause why such an order should not be made. Rule 11 of the Karnataka Housing Board Rules 1964 provides that a showcause notice in terms of the proviso to sub section (1) to Section 45 shall be in form IV. Reference to form IV prescribed by the Rules in turn shows that the occupant is required to showcause to the satisfaction of the competent authority within 10 days on receipt of the notice as to why action should not be taken and orders passed against him for eviction from the premises.

8. In the instant case, six notices were according to the respondents served upon the petitioners in respect of each premises produced as annexures-R14 to R19. Out of these notices, those marked as annexures-R14 to R17 are said to have been pasted on 1.12.97 and again on 6.12.97. Of the remaining two show cause notices, R-18 is said to have been issued on the 2.12.97 but served a day earlier on 1.12.97. The second endorsement on the


h

said notice shows the same to have been pasted once again on 6.12.97. As regards R-19, the same was issued on 2.12.97 and pasted on 7.12.97. The second affixture of all these notices gives an impression as if the competent authority had not considered the earlier affixture as sufficient service so that the period of 10 days available to the petitioners for filing their objections would expire on 16th and 17th December 1997. Assuming however that the pasting for the first time on 1.12.97 and 2.12.97 could itself be treated to be effective for purposes of reckoning the period of 10 days, yet the said period would expire on 11th and 12th December 1997 excluding the date on which the notice is affixed. An order passed on 10.12.97 would therefore be clearly premature and ~~denied~~ ^{denying} to the petitioners the benefit of the statutory period admissible to them.

9. That apart there is no explanation forthcoming as to the anomaly in notice annexure-R18 dt. 2.12.97 which as pointed out earlier even though issued on 2.12.97 is purported to have been served a day earlier on 1.12.97. ~~in fact~~. The manner in which the notices have been issued and affixed and the procedure adopted does




not therefore conform to the requirements of the proviso to section 45(1) r/w Rule 11 and form IV prescribed thereunder. What is infact interesting is that not only is the final order passed on 10.12.08 but even the eviction is carried out by the respondents with the help of police on the very same date. That procedure is however in total defiance of to the provisions of Section 45(1) which requires the final eviction notice to give to the occupant concerned a period of one month from the date of the service thereof to vacate. The impugned eviction notices all dt.10.12.97 do not ~~XXXXXX~~ grant the period which is statutorily provided for the purpose. They simply direct the occupants to vacate the premises immediately failing which action for eviction by use of such force as may be necessary is threatened. The competent authority appears to have remained totally oblivious of the requirements of Section 45(1) and thereby denied to the petitioners even the minimum period that they were entitled to for vacating the premises in their respective occupations. Mr.Achar argued and in my opinion rightly so that the grant of one months time for purposes of vacating the premises had a two fold significance. Firstly the occupant if aggrieved of



961

- 14 -

any such order could file an appeal against the same to the District Judge u/s 48 within the said period. Such a right would be rendered illusory if the competent authority were to direct immediate vacation of the premises and evict the occupant on his failure to do so. Secondly because sub section 3 to Section 45 entitled the person against whom any such order is made to pay to the Board the rent in arrears or to comply with the terms allegedly contravened by him to the satisfaction of the competent authority in which event the competent authority could in lieu of evicting such person under sub-section (2) cancel its order made under sub section (1). Both these rights conferred upon the occupant are valuable which will remain meaningful only if the occupant is given the minimum statutory period prescribed for purposes of vacating the premises. In as much as the competent authority had in the instant case directed immediate vacation of the premises without giving to the petitioners even the ^{bare} ~~xxx~~ minimum prescribed for the purpose, it not only committed an illegality but deprived the petitioners of their valuable rights of appeal u/s 48 and of getting the order cancelled in terms of Sub Section (3) of Section 45.



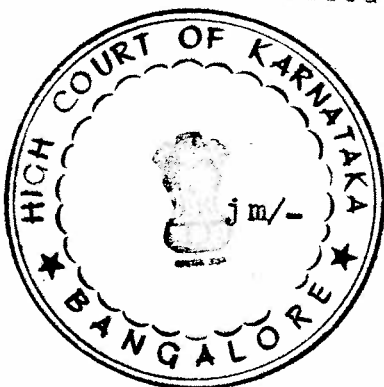
962

9. The argument that the petitions raise disputed questions of fact in the light of what has been stated above needs notice only to be rejected. Although the petitioners have disputed the affixture of the notices in question, **yet** even assuming that the notices had been affixed in the manner stated by the respondents, the same have been found to be defective and contrary to the mandatory requirements of law. So also, it is unnecessary for this Court to go into the questions where the petitioners are tenants as claimed by them or licencees as alleged by the respondents. That is a question which can be raised by the parties at the appropriate stage should the Board decide to continue the proceedings. The payment of the amount by the petitioners said to be in arrears is also not conclusive of the matter. The said payment was according to Mr. Acharya made under **protest** and only with a view to show the bonafides of the petitioners. Whether or not any arrears are due and the extent thereof can also be examined by the Competent Authority at the appropriate stage. But even assuming that any amount was due from the petitioners ~~as~~ **and that they are** licencees as alleged by the respondents, the same would not justify the denial

963

of a reasonable opportunity to the petitioners as envisaged by proviso to Section 45 or the grant of the prescribed period for vacating the premises. Reliance upon the decisions cited by counsel for respondent is in the light of what has been stated above totally misplaced.

10) In the result, these writ petitions succeed and are hereby allowed. The impugned orders/notices of eviction issued by the respondent-competent authority shall stand quashed reserving liberty for the said authority to issue fresh notices against the petitioners in accordance with law if so advised and pass a fresh order keeping in view the observations made ^{here} in above. As a consequence of the quashing of the orders on the basis whereof the petitioners have been evicted, they shall be entitled to immediate restoration of ^{including the immoveables removed from the same} the premises/and to peaceful enjoyment of the same till such time they are evicted in due course of law. The petitioners are also entitled to costs assessed at Rs.500/- in each case.



Sd/-
JUDGE